

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE VARGAS,

Plaintiff,

v.

CHELAN COUNTY REGIONAL
JUSTICE CENTER, a division of
Chelan County, and GRANT
COUNTY DISTRICT COURT, a
division of Grant County,

Defendants.

NO. CV-09-39-EFS

**ORDER GRANTING DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT**

Before the Court, without oral argument, are Defendants Chelan County Regional Justice Center's ("CCRJC") and Grant County District Court's ("GCDC") Motions for Summary Judgment (Ct. Recs. [17](#) & [22](#)), and CCRJC's Motion to Exclude Expert Testimony (Ct. Rec. [47](#)). For the reasons stated below, the Court grants these motions.

I. Background

In February 2005, Mr. Vargas was convicted of a traffic offense in Douglas County District Court. In November of that year, GCDC sentenced Mr. Vargas to thirty days imprisonment for violating probation imposed for that offense, concurrent to a separate ten-day sentence from Douglas

1 County. Because Mr. Vargas had recently moved to Wenatchee, he requested
2 permission to serve his sentence at CCRJC. GCDC granted permission to
3 do so to accommodate Mr. Vargas. Whenever inmates serve their sentence
4 outside the county, GCDC sends a letter saying that the inmate must give
5 GCDC a commitment signed off by the jail as proof of confinement. (Ct.
6 Rec. 19 Ex. 2.) Although GCDC Clerk Jessica Hinen apparently sent Mr.
7 Vargas this letter, *id.*, he denies that he received it. *Id.* at 20.
8 CCRJC ordinarily notifies the courts in Chelan and Douglas Counties,
9 which are in its service area, when individuals from those counties serve
10 their sentence at CCRJC. (Ct. Rec. 41 Ex. E at 10.) It does not notify
11 courts in other counties. *Id.* After Mr. Vargas was released in January
12 2006, neither he nor CCRJC notified GCDC that he completed his sentence.
13 *Id.* at 13; *id.* Ex. C at 28.

14 Two years passed without word from GCDC. One day, Ms. Hinen scanned
15 Mr. Vargas's file and noticed that GCDC had no proof that he had served
16 his sentence. Instead of asking CCRJC or Mr. Vargas to explain, Ms.
17 Hinen obtained an arrest warrant. She said later that she is not
18 required to obtain proof and that she does not "babysit." *Id.* Ex. B at
19 14. Over Mr. Vargas's protests, Grant County Sheriff deputies arrested
20 him at work at around 3:00 p.m. on February 14, 2008, for failure to
21 serve his sentence. *Id.* Ex. C at 9-11. A baffled Mr. Vargas was booked
22 at the Grant County Jail, where he called his lawyer to straighten out
23 the confusion. *Id.* at 11. Fortunately for Mr. Vargas, his kafkaesque¹

25 ¹ Czech novelist Franz Kafka is widely recognized as a master of the
26 absurd. In his famous novel *The Trial*, the protagonist is arrested and
tried by an unnamed authority without ever knowing the offense with which
ORDER * 2

1 confinement soon ended. Eventually, jail authorities called CCRJC and
2 confirmed that Mr. Vargas had served his sentence, and released him at
3 7:00 p.m. *Id.* at 12; (Ct. Rec. 1 at 3.) Although Mr. Vargas was no
4 longer incarcerated, four days later, GCDC sent Mr. Vargas a letter
5 ordering him to pay a \$168.00 fee for issuing the arrest warrant.

6 Mr. Vargas sued Defendants on February 11, 2009, alleging Defendants
7 violated his constitutional rights and committed several state law torts.

8 **II. Discussion**

9 **A. Standard**

10 Summary judgment is appropriate if the "pleadings, depositions,
11 answers to interrogatories, and admissions on file, together with the
12 affidavits, if any, show that there is no genuine issue as to any
13 material fact and that the moving party is entitled to judgment as a
14 matter of law." FED. R. CIV. P. 56(c). Once a party has moved for
15 summary judgment, the opposing party must point to specific facts
16 establishing that there is a genuine issue for trial. *Celotex Corp. v.*
17 *Catrett*, 477 U.S. 317, 324 (1986). If the nonmoving party fails to make
18 such a showing for any of the elements essential to its case for which
19 it bears the burden of proof, the trial court should grant the summary
20 judgment motion. *Id.* at 322. "When the moving party has carried its
21 burden of [showing that it is entitled to judgment as a matter of law],
22 its opponent must do more than show that there is some metaphysical doubt
23 as to material facts. In the language of [Rule 56], the nonmoving party
24 must come forward with 'specific facts showing that there is a genuine
25 issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
26

he is charged.

1 475 U.S. 574, 586-87 (1986) (citations omitted) (emphasis in original
2 opinion).

3 When considering a motion for summary judgment, a court should not
4 weigh the evidence or assess credibility; instead, "the evidence of the
5 non-movant is to be believed, and all justifiable inferences are to be
6 drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255
7 (1986). This does not mean that a court will accept as true assertions
8 made by the non-moving party that are flatly contradicted by the record.
9 See *Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties
10 tell two different stories, one of which is blatantly contradicted by the
11 record, so that no reasonable jury could believe it, a court should not
12 adopt that version of the facts for purposes of ruling on a motion for
13 summary judgment.").

14 **B. Motion to Exclude**

15 Both Defendants move to exclude as untimely the testimony of Warren
16 F. Cook, Mr. Vargas's expert witness, who plans to testify about law
17 enforcement policies. The Court's May 14, 2009 scheduling order required
18 Mr. Vargas to disclose experts by August 11, 2009. (Ct. Rec. 15 at 2.)
19 Additionally, it warned the parties that "failure to timely identify
20 experts and provide reports in accordance with Rule 26 and this
21 scheduling order may result in exclusion of such testimony absent good
22 reason." *Id.* Mr. Vargas first mentioned Mr. Cook in his September 11,
23 2009 witness list. (Ct. Rec. 16.) He first submitted a summary of Mr.
24 Cook's testimony on January 11, 2010, in the declaration in opposition
25 to the motions under consideration. (Ct. Rec. 40.)

26 A district court may modify its scheduling order "for good cause."
Fed. R. Civ. P. 16(b)(4). The good cause inquiry focuses on the

1 diligence of the party seeking amendment of the order. *Johnson v.*
2 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). If that
3 party was not diligent, the inquiry ends; the existence or degree of
4 prejudice to the other party is irrelevant. *Id.*; see also *Wong v.*
5 *Regents of Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005) (upholding
6 exclusion of late-identified experts when no good cause was shown).

7 Mr. Vargas did not show that he was diligent in retaining and
8 identifying Mr. Cook before the Court's deadline. He stresses that
9 Defendants suffered no prejudice from the late filing, but that is no
10 excuse. His only explanation for his lateness is that the expert
11 disclosure deadline was unreasonable and that depositions revealed new
12 facts that changed his expert needs. He does not demonstrate that he
13 diligently sought to comply with the Court's order. Accordingly, Mr.
14 Cook's testimony is excluded and his declaration is stricken.

15 **C. Section 1983**

16 Mr. Vargas's Complaint alleges that Defendants violated his due
17 process rights by arresting him without probable cause and GCDC infringed
18 his liberty interest by issuing an arrest warrant without first checking
19 with CCRJC. Additionally, Mr. Vargas raised an equal protection claim
20 against CCRJC for the first time in his opposition brief. The Court
21 finds that Defendants are entitled to summary judgment on these claims.

22 **1. Due Process**

23 Defendants are entitled to summary judgment on the due process claim
24 based on Mr. Vargas's arrest because Mr. Vargas does not allege that
25 Defendants arrested him: the Complaint itself says that Grant County
26 Sheriff deputies did. (Ct. Rec. 1 at 2-3.) Furthermore, "[a]n
incorrect arrest does not provides grounds for a claim of deprivation of

1 liberty without due process if the arrest was made pursuant to a valid
2 warrant based upon probable cause." *Bretz v. Kelman*, 773 F.2d 1026,
3 1030-31 (9th Cir. 1985) (citing *Baker v. McCollan*, 443 U.S. 137, 143-45
4 (1979)). It is undisputed that GCDC's records showed he had not
5 completed his sentence. (Ct. Rec. 20 at 3; Ct. Rec. 24 at 2; Ct. Rec.
6 41 Ex. 3 at 13-14; Ct. Rec. 42 at 4.) Therefore, the issuing judge had
7 reason to believe that Mr. Vargas should be arrested to begin serving his
8 sentence. Although Defendants later discovered that Mr. Vargas was
9 arrested for no good reason, the arrest was based on a valid warrant
10 supported by probable cause.

11 Mr. Vargas's Complaint also says that GCDC has an "improper custom
12 or policy in making arrests and obtaining arrest warrants." (Ct. Rec.
13 1 at 5.) The Court sympathizes with Mr. Vargas. At two crucial
14 junctures, Defendants failed to take simple actions that would have
15 prevented Mr. Vargas from suffering serious embarrassment and
16 inconvenience. When Ms. Hinen discovered GCDC had no proof of Mr.
17 Vargas's confinement, instead of obtaining a warrant, she could have
18 picked up the telephone and called CCRJC. And when the deputies arrived
19 to arrest Mr. Vargas, they could have allowed him to call his lawyer to
20 explain rather than cart him off to jail and hold him for four hours.
21 If either Ms. Hinen or the deputies had remembered to be the good people
22 they think they are and may well be, the entire mishap, together with
23 this lawsuit, would likely never have happened.

24 Nevertheless, the Court cannot conclude that Defendants violated Mr.
25 Vargas's due process rights. The Supreme Court repeatedly held that
26 deprivations of liberty caused by a government official's negligent
actions do not implicate the due process clause. *County of Sacramento*

1 *v. Lewis*, 523 U.S. 833, 849 (1998); *Davidson v. Cannon*, 474 U.S. 344, 347
2 (1986); *Daniels v. Williams*, 474 U.S. 327, 328 (1986). Defendants'
3 conduct, although not ideal, amounted to negligence at most. Mr. Vargas
4 does not allege that either Defendant intentionally harmed him by failing
5 to coordinate with the other before he was arrested, and offers no
6 support to show that they purposefully deprived him of his rights.
7 Accordingly, the Court concludes that Defendants' actions did not violate
8 Mr. Vargas's substantive or procedural due process rights.

9 **2. Equal Protection**

10 Mr. Vargas argues that CCRJC policy discriminates among similarly-
11 situated groups because CCRJC provides proof that a sentence was
12 completed to courts in counties within its service area but not to other
13 courts. (Ct. Rec. 39 at 10-13.) Mr. Vargas did not raise this claim in
14 any way before his opposition brief, which he filed more than two months
15 after the discovery cutoff and only three months before trial. (Ct. Rec.
16 15.) It would unfairly prejudice CCRJC to entertain this claim because
17 Mr. Vargas did not raise it until after the discovery cutoff.

18 Furthermore, Mr. Vargas's equal protection claim lacks legal
19 support. In order to show an equal protection violation, a plaintiff
20 must demonstrate that the defendant treated similarly-situated groups
21 differently. See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432,
22 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). If the
23 distinction is based on membership in an unprotected class, the
24 government must show only that the classification is rationally related
25 to a legitimate interest. *Cleburne*, 473 U.S. at 440 (citations omitted).
26 Mr. Vargas claims that CCRJC discriminates against inmates from outside
its service area because it does not notify the courts that sentenced

1 them after they complete their confinement. Because geographic location
2 is not a protected category, geographic discrimination does not violate
3 equal protection unless there is no rational basis for the distinction.
4 *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54 n.110 (1973);
5 *McGowan v. Maryland*, 366 U.S. 420, 427 (1961) (holding that the Equal
6 Protection Clause requires "equality between persons as such, rather than
7 between areas and that territorial uniformity is not a constitutional
8 prerequisite"); *United States v. Yazzie*, 693 F.2d 102, 103 (9th Cir.
9 1982). CCRJC showed a rational basis for its policy. Ordinarily, CCRJC
10 accepts inmates only from the counties within its service area. Inmates
11 from outside the service area, such as Mr. Vargas, must receive special
12 permission to serve their sentence at CCRJC. Because so few inmates from
13 outside the service area spend time at CCRJC, it is rational for CCRJC
14 officials to require such inmates to contact their sentencing courts
15 themselves after completing their sentence.

16 Finally, although Mr. Vargas argues that his equal protection claim
17 implicates a fundamental right and CCRJC's policies should be subject to
18 strict scrutiny, this confuses equal protection with due process. *See*,
19 *e.g.*, *Reno v. Flores*, 507 U.S. 292, 301-02 (1993); *Halverson v. Skagit*
20 *County*, 42 F.3d 1257, 1261 (9th Cir. 1994) (noting that protection from
21 government action provided by substantive due process is reserved for
22 vindication of fundamental rights). For the reasons stated above, Mr.
23 Vargas's due process claim must be dismissed.

24 Mr. Vargas's § 1983 claim is his only claim arising under federal
25 law, and the Court dismisses that claim. The Court declines to exercise
26 pendent jurisdiction over the state law claims because there is no
federal claim. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715,

1 725 (1966). Moreover, the dispute in this case is between a citizen and
2 municipalities of Washington, so there is no diversity of citizenship.
3 *See Cook v. City of Pomona*, 884 F. Supp. 1457, 1463 (C.D. Cal. 1995).
4 Because the Court concludes that both Defendants are entitled to summary
5 judgment on the only federal claim, it must dismiss Mr. Vargas's suit in
6 its entirety because it lacks subject matter jurisdiction to hear the
7 remaining claims. See 28 U.S.C. §§ 1331, 1332.

8 **III. Conclusion**

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1) Defendants' Motions for Summary Judgment (**Ct. Recs. [17](#) & [22](#)**) are
11 **GRANTED**.

12 2) CCRJC's Motion to Exclude (**Ct. Rec. [47](#)**) is **GRANTED**, and GCDC's
13 Objection to Plaintiff's Expert Warren Cook's Declaration (**Ct. Rec. [52](#)**)
14 is **SUSTAINED**. The Declaration of Warren F. Cook (**Ct. Rec. [40](#)**) is
15 **STRICKEN**.

16 3) The Clerk of the court is directed to **ENTER** Judgment in
17 Defendants' favor on the § 1983 claims.

18 4) This case is **CLOSED**.

19 **IT IS SO ORDERED**. The District Court Executive is directed to enter
20 this Order and distribute copies to counsel.

21 **DATED** this 22nd day of February 2010.

23 S/ Edward F. Shea
24 EDWARD F. SHEA
United States District Judge

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